IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Tr.P(C).No. 67 of 2007()

OP.1344/2006 of FAMILY COURT,THRISSUR

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PETITIONER :

MAHESWARIAMMA T.R @ MEERA,W/O.
V.V.RAJENDRAN @ SUNIL,THACHARAYIL,
THALAYOLAPARAMBU P.O,KOTTAYAM.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

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1. V.V.RAJENDRAN @ SUNIL,S/O.VISHWANATHAN,
VISHVAPURATH HOUSE,MANAKKULAM PALACE ROAD,
KUNNAMKULAM P.O.,THRISSUR.

2. SARASWATHI,W/O.LATE VISWANATHAN,
VISWAPURATH HOUSE,KUNNAMKULAM P.O PALACE ROAD,
TRISSUR.

BY ADV. SMT.C.S.SHEEJA

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, ALONG WITH TPC NO. 112 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.831/07 IN Tr.P.C.No.67/2007

DISMISSED:

13/6/2007 SD/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No. 337 OF 2007 A

Dated this the 7th June, 2007.

O R D E R

This Civil Revision Petition is filed by the defendant in O.S.95/2001 in the form of E.A.106/2005. The E.A. is filed to set aside the judgment and decree in O.S.95/01 and 96/01 which, according to the revision petitioner, are the result of fraud and cheating played by the respondent. The executing court had dismissed the application. It is stated in the order that petition was filed for the very same relief as E.A.69/2005 and again another E.A..83/04 challenging the execution of the decree. Both those applications were dismissed. Now, learned counsel for the revision petitioner would submit that some of the grounds raised in the present execution application was not raised in the previous applications and, therefore, there is no bar for the petitioner to file an execution petition of this nature. Learned counsel had invited my attention to the decision of the Apex Court reported in **S.P.Chengalvaraya Naidu v. Jagannath** {AIR 1994 SC 853}. It was a case where a preliminary decree was passed and an application for final decree was filed. The Apex Court found that a very crucial factor of payment of amount which was fundamental as far as the case was concerned was

withheld from the purview of the court and therefore refused to entertain the final decree application and dismissed the suit. Here, both the suits were filed and rightly or wrongly a decree had been passed. Against these decrees appeal was filed, which was dismissed and even the special leave filed before the Hon'ble Apex Court also was dismissed. So, the decree and judgment of the court were tested by at least two superior authorities and was confirmed and it was that decree that was put into execution by the decree holder. It is a well settled principle that fraud cannot be inferred from mere conjectures and surmises. I am equally aware of the fact that there may not be direct evidence of fraud and it has to be gathered from surrounding circumstances. If a decree is voidable on the ground of fraud a suit has to be filed narrating grounds of fraud and an adjudication threadbare is necessary to find out the same. Now, what the defendant wants is to file an application on the execution side contending that the decree is vitiated by fraud. For the very same relief on different grounds he filed two other applications and they were got dismissed and it has also attained finality. Law does not permit a party to go on filing applications after applications contending that one ground was omitted to be included in the earlier and that

is why the theory of 'might and ought' have been included under Section 11 of the CPC. As far as this case is concerned earlier decisions of the Apex Court and the very attempt of the revision petitioner had failed on two other occasions which had not been taken before the higher authorities and therefore, at least those decisions are binding on the revision petitioner and he is clearly precluded from filing an application of this nature. Further, it has to be held that the scope of enquiry under Section 47 is limited and the court is not expected to go into these type of allegations in a petition which goes against the root of Section 47. Therefore, I do not find any illegality or irregularity passed by the learned Subordinate Judge and therefore the said order is to be sustained and C.R.P. is dismissed.

M.N.KRISHNAN
Judge

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